

(B) Specify the judicial eviction procedure to be used by the PHA for eviction of the tenant, and state that HUD has determined that this eviction procedure provides the opportunity for a hearing in court that contains the basic elements of due process as defined in HUD regulations.

(C) State whether the eviction is for a criminal activity as described in § 966.51(a)(2)(i)(A) or for a drug-related criminal activity as described in § 966.51(a)(2)(i)(B).

(4) *How tenant is evicted.* The PHA may evict the tenant from the unit either:

(i) By bringing a court action or;

(ii) By bringing an administrative action if law of the jurisdiction permits eviction by administrative action, after a due process administrative hearing, and without a court determination of the rights and liabilities of the parties. In order to evict without bringing a court action, the PHA must afford the tenant the opportunity for a pre-eviction hearing in accordance with the PHA grievance procedure.

(5) *Eviction for criminal activity—(i) PHA discretion to consider circumstances.* In deciding to evict for criminal activity, the PHA shall have discretion to consider all of the circumstances of the case, including the seriousness of the offense, the extent of participation by family members, and the effects that the eviction would have on family members not involved in the proscribed activity. In appropriate cases, the PHA may permit continued occupancy by remaining family members and may impose a condition that family members who engaged in the proscribed activity will not reside in the unit. A PHA may require a family member who has engaged in the illegal use of drugs to present evidence of successful completion of a treatment program as a condition to being allowed to reside in the unit.

(ii) *Notice to Post Office.* When a PHA evicts an individual or family from a dwelling unit for engaging in criminal activity, including drug-related criminal activity, the PHA shall notify the local post office serving that dwelling unit that such individual or family is no longer residing in the dwelling unit. (So that the post office will terminate

delivery of mail for such persons at the unit, and that such persons not return to the project for pickup of the mail.)

(m) *Eviction: Right to examine PHA documents before hearing or trial.* The PHA shall provide the tenant a reasonable opportunity to examine, at the tenant's request, before a PHA grievance hearing or court trial concerning a termination of tenancy or eviction, any documents, including records and regulations, which are in the possession of the PHA, and which are directly relevant to the termination of tenancy or eviction. The tenant shall be allowed to copy any such document at the tenant's expense. A notice of lease termination pursuant to § 966.4(l) (3) shall inform the tenant of the tenant's right to examine PHA documents concerning the termination of tenancy or eviction. If the PHA does not make documents available for examination upon request by the tenant (in accordance with this § 966.4(m)), the PHA may not proceed with the eviction.

(n) *Grievance procedures.* The lease shall provide that all disputes concerning the obligations of the tenant or the PHA shall (except as provided in § 966.51(a)(2)) be resolved in accordance with the PHA grievance procedures. The grievance procedures shall comply with subpart B of this part.

(o) *Provision for modifications.* The lease shall provide that modification of the lease must be accomplished by a written rider to the lease executed by both parties, except for paragraph (c) of this section and § 966.5.

(p) *Signature clause.* The lease shall provide a signature clause attesting that the lease has been executed by the parties.

[56 FR 51576, Oct. 11, 1991, as amended at 61 FR 13273, Mar. 26, 1996]

§ 966.5 Posting of policies, rules and regulations.

Schedules of special charges for services, repairs and utilities and rules and regulations which are required to be incorporated in the lease by reference shall be publicly posted in a conspicuous manner in the Project Office and shall be furnished to applicants and tenants on request. Such schedules, rules and regulations may be modified from time to time by the PHA provided

that the PHA shall give at least 30-day written notice to each affected tenant setting forth the proposed modification, the reasons therefor, and providing the tenant an opportunity to present written comments which shall be taken into consideration by the PHA prior to the proposed modification becoming effective. A copy of such notice shall be:

- (a) Delivered directly or mailed to each tenant; or
- (b) Posted in at least three (3) conspicuous places within each structure or building in which the affected dwelling units are located, as well as in a conspicuous place at the project office, if any, of if none, a similar central business location within the project.

§ 966.6 Prohibited lease provisions.

Lease clauses of the nature described below shall not be included in new leases between a PHA and a tenant and shall be deleted from existing leases either by amendment thereof or execution of a new lease:

- (a) *Confession of judgment.* Prior consent by the tenant to any lawsuit the landlord may bring against him in connection with the lease and to a judgment in favor of the landlord.
- (b) *Distrait for rent or other charges.* Agreement by the tenant that landlord is authorized to take property of the tenant and hold it as a pledge until the tenant performs the obligation which the landlord has determined the tenant has failed to perform.
- (c) *Exculpatory clauses.* Agreement by the tenant not to hold the landlord or landlord's agent liable for any acts or omissions whether intentional or negligent on the part of the landlord or the landlord's authorized representatives or agents.
- (d) *Waiver of legal notice by tenant prior to actions for eviction or money judgments.* Agreements by the tenant that the landlord may institute suit without any notice to the tenant that the suit has been filed, thus preventing the tenant from defending against the lawsuit.
- (e) *Waiver of legal proceedings.* Authorization to the landlord to evict the tenant or hold or sell the tenant's possessions whenever the landlord determines that a breach or default has oc-

curred without notice to the tenant or any determination by a court of the rights and liabilities of the parties.

(f) *Waiver of jury trial.* Authorization of the landlord's lawyer to appear in court for the tenant and waive the right to a trial by jury.

(g) *Waiver of right to appeal judicial error in legal proceeding.* Authorization to the landlord's lawyer to waive the right to appeal for judicial error in any suit or to waive the right to file a suit in equity to prevent the execution of a judgment.

(h) *Tenant chargeable with cost of legal actions regardless of outcome.* Provision that the tenant agrees to pay attorney's fees or other legal costs whenever the landlord decides to take action against the tenant even though the court determines that the tenant prevails in the action. Prohibition of this type of provision does not mean that the tenant as a party to the lawsuit may not be obligated to pay attorney's fees or other costs if he loses the suit.

§ 966.7 Accommodation of persons with disabilities.

(a) For all aspects of the lease and grievance procedures, a handicapped person shall be provided reasonable accommodation to the extent necessary to provide the handicapped person with an opportunity to use and occupy the dwelling unit equal to a non-handicapped person.

(b) The PHA shall provide a notice to each tenant that the tenant may, at any time during the tenancy, request reasonable accommodation of a handicap of a household member, including reasonable accommodation so that the tenant can meet lease requirements or other requirements of tenancy.

[56 FR 51579, Oct. 11, 1991]

Subpart B—Grievance Procedures and Requirements

SOURCE: 40 FR 33406, Aug. 7, 1975, unless otherwise noted. Redesignated at 49 FR 6714, Feb. 23, 1984.

§ 966.50 Purpose and scope.

The purpose of this subpart is to set forth the requirements, standards and criteria for a grievance procedure to be established and implemented by public